THE ELASTICITY OF THE CONSTITUTION.

II.

FROM the facts and argument contained in the former part of this article it appears that the object of all interpretation is the discovery of the original intent; and that, this being a constant, the construction of the Constitution should never vary.[1] If a given construction was correct in the year 1800, it is correct to-day. If wrong then, it is wrong now, no matter how expedient a change may be. The construction of the Constitution is as much a part of the instrument as the words themselves, and can no more change by lapse of time and altered circumstances than the text itself. Neither the one nor the other can be altered except by a constitutional amendment duly passed.

It does not follow that an act which was unconstitutional one hundred years ago must necessarily be so held to-day. For while the Constitution and its construction must remain unchanged, yet the validity *vel non* of a legislative act often depends partly upon questions of fact, and the facts upon which the decision hangs may have completely changed within a century. The separation of the law from the facts is a difficult but transcendently important task. For while denying in the most unqualified terms the notion that the Constitution is capable of a varying construction, we may often be swayed by the same arguments advanced in favor of that heresy, and even reach the same results, but in a perfectly legitimate way, simply by a careful discrimination between matters of law and fact. The law of the Constitution remains forever unchanging: the facts to which it must be applied are infinitely various.

The distinction between law and fact is, however, often so difficult and illusory that constitutional cases which really turn on matters of fact sometimes seem to establish some novel proposition of law. Hasty inferences, therefore, in regard to such matters should be avoided. For such decisions are often thought to prove that the interpretation of the Constitution may vary — a position which has already been proved untenable. For example, the Con-

[1] "An act of Parliament cannot alter by reason of time." Dwarris on Statutes, Maxim IV. (Potter's ed.) p. 122.

stitution provides that amendments shall be adopted only with the consent of three fourths of the states. When the number of states was thirteen, the consent of ten was sufficient. Now that the Union is composed of forty-five, the same number — ten — is, of course, wholly inadequate. Because, in 1790, the best authorities would have held the consent of ten states enough to ratify an amendment, while at the present day the decision would be different, it would be idle to argue that the construction of the Constitution has changed. Every one would at once perceive the fallacy. The interpretation of the Constitution is unaltered. Now, as formerly, three fourths of the states, and three fourths only, are requisite. But the number of states in fact has multiplied nearly fourfold. Therefore, while the same meaning is given to the words, "three fourths of the several states," the facts to which the law must be applied have changed, so that the same interpretation of the instrument reaches a different result as to the power of ten states. In this particular case the matter is so transparent as to render analysis almost superfluous; but, in more complicated cases, the detection of error is no such child's play.

For example, the Fifth and Fourteenth Amendments forbid arbitrary legislation. It is obvious that a law might, under one state of facts, be most unjust and oppressive, while an act couched in precisely the same terms might, under other circumstances, prove highly beneficial. Thus, an act passed at the present time in the interest of manufacturers of oleomargarine forbidding absolutely the sale of butter would undoubtedly be arbitrary legislation. But suppose the facts should change. Suppose oleomargarine should come to be by all classes of people greatly preferred to butter as an article of diet. In other words, suppose present conditions to be exactly reversed, so that butter should be deemed, as oleomargarine is now, an undesirable product which unscrupulous dealers are likely to substitute for a similar and more popular article. On those facts, it seems, the legislature might constitutionally prohibit the manufacture and sale of butter; and for the prevention of fraud, a law to that effect would be sustained, just as acts absolutely forbidding the sale or manufacture of oleomargarine are now, for that purpose, upheld.[1] Therefore, circumstances might arise in which the sale of butter might constitutionally be forbidden. Yet the construction of the Constitution would not have varied. The same rule of constitutional law

[1] Powell *v.* Pennsylvania, 127 U. S. 678.

would be applied, the same definition of "due process" would be given. It is the facts which would have changed; the law — the interpretation of the Constitution — would be still unaltered.

In such instances the distinction between the facts, which may vary, and the law, which must remain constant, while reasonably clear, is nevertheless to some people somewhat obscured, because the facts upon which the constitutionality of an act of the legislature depends are never determined by a jury, but always by the court. Of course, the judges in actions at law are often called upon to decide questions of fact; and it is an obvious, though common error to suppose that all matters of fact are submitted to the jury.[1] Moreover, even in a jurisdiction where by constitutional provision the jury in criminal cases are judges of law as well as of fact, they are not permitted to question the constitutionality of an act of assembly.[2] So high a function is reserved exclusively for the judiciary; and the courts are of course entitled to decide any incidental questions of fact by which their decision might be influenced. If a judge ever chooses to take the opinion of a jury upon these matters, it should be clearly recognized that in so doing he is acting merely for his own convenience and better information. The decision of the jury is in no sense binding on him.

One result of confusion of law and fact in constitutional cases is that decisions rendered upon one state of facts are cited for authority under totally different circumstances. Moreover, the courts seem to feel that unless they reach the same ultimate result, they are being swayed by "purely legislative" considerations. Indeed, one unfortunate consequence of the reverence of the common law for judicial precedent is the likelihood that decisions on matters of mere fact will be treated as establishing a rule of law. This is exemplified wherever a court is called upon to decide questions of fact. Thus, in the construction of wills and other written documents, a mere inference of fact is sometimes called and often treated as a proposition of law. So the exercise by the court of its supervisory power to prevent or set aside unreasonable verdicts is often, though erroneously, thought to be the annunciation of a point of law. It is through this error that the "stop, look, and listen" rule has crept into the negligence law of some states. In the same way, this tendency to adhere to what

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[1] Thayer, Prelim. Treatise on Ev., pp. 183–189.

[2] Franklin *v.* State, 12 Md. 236.

appears to be the letter of prior decisions is a force which must be reckoned with in constitutional cases, even when the facts which justified the earlier judgment no longer exist. Thus, in Budd *v.* New York,[1] the Supreme Court of the United States held that the prices charged by certain grain elevators at Buffalo and New York city were subject to reasonable legislative control; and they assigned as their *ratio decidendi* that such elevators, lying at the two extremities of the river and canal route from the Great Lakes to the Atlantic, formed part of that system of transportation and enjoyed a "practical monopoly." In a subsequent case,[2] the question related to an elevator in a small village in Dakota. It was urged upon the court that all the former reasoning was inapplicable, that the question arose upon widely different facts. There was no "practical monopoly;" the elevator formed no link in any system of transportation; and yet the court brushed aside all this argument with the reply that these were "purely legislative" considerations, and Budd *v.* New York was treated as controlling authority. Without questioning the soundness of either decision, it may be permitted to doubt whether the second was a *necessary* consequence of the former. That is to say, it must be conceded that some laws may be contrary to the federal Constitution in Dakota which would be unexceptionable in New York, and *vice versa*. The habits, manners, opinions, and needs of the people of the several states are so widely divergent that what would be arbitrary in one state at one time may, at the same time in another state,[3] or at another time in the same state,[4] be harmless and even beneficent.

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[1] 143 U. S. 517. [2] Brass *v.* Stoeser, 153 U. S. 391.

[3] "What would be a fair and just provision in one state might be oppressive and grossly arbitrary elsewhere. Each state has its peculiar interests and traditions that may call for distinct legislative policies. The federal courts must recognize that doctrines (*e. g.* relating to mining, irrigation, levees, etc.), obtaining justly and of necessity in the West and Southwest, might be entirely inapplicable and unreasonable if enforced in the states of the East, and laws enacting them might be held arbitrary and void as entirely unsuited to conditions in the Eastern states. But the question is more legislative than judicial." Guthrie, Fourteenth Amendment, p. 72. Cf. King *v.* Mullins, 171 U. S. 404, 422; Fallbrook Irrigation Dist. *v.* Bradley, 164 U. S. 160.

[4] This is strikingly illustrated by the form of the decree in Smyth *v.* Ames, 169 U. S. 466. In that case certain railroad companies sought to enjoin the enforcement of a statute of Nebraska which was alleged to deprive them of property without due process of law by prescribing unreasonably low freight charges. The court, after stating the various circumstances on which the reasonableness of rates depends, and after holding the statutes unconstitutional as applied to the facts in existence when the decree of the court below was passed, used the following language: "It may be added that

Of course, it is true that such distinctions are "more legislative than judicial," [1] and that this doctrine in regard to the Fourteenth Amendment opens up to the courts many matters unsuited for judicial discussion. But our judges must recognize that under the American system of constitutional government many problems must be submitted to the judiciary which in other countries would be referred exclusively to the legislature. In the United States, every member of a legislative body, when voting on a pending measure, answers two questions: first, "Is it constitutional?" and, second, "Is it expedient?" The latter of these is for the legislature alone, and its decision thereon is absolutely final. Its action may be repealed by a subsequent assembly. It cannot be revised by any other tribunal. Upon the former of the two questions, the decision of the legislature, while *prima facie* binding and correct, is yet subject to review, and, in clear cases, to reversal by the judiciary. But even this question of constitutionality may be affected by the same or similar considerations as the other matter of legislative expediency. This is emphatically true of cases arising under the Fourteenth Amendment. That article is aimed, roughly speaking, at any arbitrary and oppressive legislation. Now, the purely legislative question of expediency includes the propriety and justice of any proposed enactment; and the question whether a measure is unjust often involves matters peculiarly suited for legislative, and correspondingly unfitted for judicial, consideration. Yet arbitrariness is only a high degree of injustice; and, therefore, in determining whether a measure is arbitrary and so in conflict with the Fourteenth Amendment, the legislature in the first instance and the courts, so to speak, on appeal, are obliged to weigh the identical arguments, pro and con, which are pertinent to the purely legislative question of expediency and justice.[2] The courts, therefore, when considering the Fourteenth Amendment and kindred topics, ought not, on principle, to reject facts and arguments simply because they relate to the question of expediency — expediency, that is, in the sense of true, just, and moral expediency.

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the conditions of business, so far as railroad corporations are concerned, have probably changed for the better since the decree below, and that the rates prescribed by the statute of 1893 may now afford all the compensation to which the railroad companies in Nebraska are entitled as between them and the public. . . . If the Circuit Court finds that the present condition of business is such as to admit of the application of the statute to the railroad companies in question without depriving them of just compensation, it will be its duty to discharge the injunction heretofore granted." 169 U. S. 549, 550.

[1] See *supra*, note (3) *ad finem*.

[2] See Smyth *v.* Ames, 169 U. S. 466.

They should not scruple to sustain a law, although under other conditions a similar act may have been held in conflict with the Fourteenth Amendment, and *vice versa*. They should not be frightened because the differences between the facts on which the cases respectively arise are "purely legislative." They should further inquire whether the differences, which of course are legislative, are of sufficient magnitude and importance to turn the scale in deciding whether or not the act is arbitrary and glaringly unjust.

The difficulty of determining the precise point at which the changes in the facts of the case may properly make a difference in the decision of the court is unquestionably enormous. It is always extremely difficult to draw a sharp line between cases which gradually shade into one another. One cannot say precisely what statutes should be held arbitrary even on a given state of facts;[1] and the difficulty is intensified a hundredfold where the facts are constantly changing, now slowly, now with almost startling rapidity. Indeed, the Supreme Court expressly refuses to lay down any general rule, and contents itself with determining, as each case is presented, on which side of the line it falls.[2] This is clearly the proper mode of procedure. The difficulties of reaching a decision are increased rather than lessened by putting hypothetical cases which lie close to the line. In Brass *v.* Stoeser,[3] the question in that way was needlessly obscured. After stating the argument that the regulation of elevators in large cities like New York and Chicago was widely different from the regulation of the same business in small country towns, so that the one might be valid and the other unconstitutional, the court said:[4] "It can scarcely be meant to contend that the statutes of Illinois and New York, valid in their present form, would become illegal if the lawmakers thought fit to repeal the clauses limiting their operation to

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[1] Atchison, Topeka & Santa Fé R. R. Co. *v.* Matthews, 174 U. S. 96, 105, 106.

"This phrase, 'due process of law,' never has been defined, and probably never can be defined so as to draw a clear and distinct line applicable to all cases between proceedings which are by due process of law and those which are not." Per Miller, J., in Freeland *v.* Williams, 131 U. S. 405, 418.

[2] "There is wisdom, we think, in the ascertaining of the intent and meaning of such an important phrase in the federal Constitution, by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded." Holden *v.* Hardy, 169 U. S. 366, 390. The same rule has been laid down as to the clause relating to "privileges and immunities of citizens in the several states." Conner *v.* Elliott, 18 How. 591, 593.

[3] 153 U. S. 391. See *supra*, p. 277.

[4] 153 U. S. 391.

cities of a certain size, or that the statute of North Dakota would at once be validated if one or more of her towns were to reach a population of one hundred thousand, and her legislature were to restrict the operation of the statute to such cities." No doubt, the decision in Brass *v.* Stoeser was perfectly correct. No doubt, the differences between that case and Budd *v.* New York [1] were not enough to affect the constitutionality of the act. It is merely against the method of reasoning that this protest is entered. To imagine a series of minute variations from the facts of a former case, and then to argue that the first case of the series is not materially different from the original case, nor the second from the first, nor the third from the second, and so on, and that therefore the difference between the last of the series and the original case is immaterial, is a repetition of the ancient sophism of the *sorites*.[2] The important point is to keep clearly in mind that circumstances alter cases, that a statute which on one state of facts is just and proper may on another state of facts be arbitrary and void, and that this doctrine involves no departure from the intention of the framers, nor any adoption of a shifting, variable construction of the Constitution.

It should be observed that when in this connection matter of fact is spoken of, the term includes all matters of ordinary municipal law — everything, that is, except constitutional law. The Constitution is a *lex legum*. In applying its provisions to laws of inferior obligation, the latter are to be regarded as facts. Consequently, a law may be valid in one State and contrary to the federal Constitution in another because of a difference in domestic law — for example, in the law of property — in the two jurisdictions. Thus, riparian lands in Louisiana are subject to an easement in favor of the state for the construction of levees. When, therefore, in Louisiana such structures are erected, the owners of the soil are not entitled to compensation, for the state is merely exercising its easement.[3] But in Massachusetts, or Maryland, the

[1] 143 U. S. 517.

[2] "For example, I ask, Does one grain of corn make up a heap of grain? My opponent answers, No. I then go on asking the same question of two, three, four, and so on *ad infinitum*, nor can the respondent find the number at which the grains begin to constitute a heap. On the other hand, if we depart from the answer, — that a thousand grains make a heap, — the interrogation may be carried downward to unity, and the answerer be unable to determine the limit where the grains cease to make up a heap. The same process may be performed, it is manifest, upon all the notions of proportion in space and time and degree, both in continuous and discrete quantity." Sir William Hamilton, Lectures on Logic, p. 332.

[3] Eldridge *v.* Trezevant, 160 U. S. 452.

law of property is different. Riparian lands are subject to no such servitude. The legislatures, therefore, of those States, could not authorize the building of levees along the shores of the Merrimac or the Potomac without compensating the persons whose lands would be appropriated.

Whether any given change of circumstances is or is not material often depends on the answer given to questions of construction. The ratification of constitutional amendments will again serve as an example. The provision that a proposed amendment must, before taking effect, be ratified by "three fourths of the several States" is universally and properly taken to mean three fourths of the number of States for the time being; but it is conceivable that the same words might mean three fourths of the original number of States. If that construction were to be adopted, the increase in the number of States would of course be immaterial; and ten commonwealths would still, as at the formation of the Union, enjoy the power to alter the supreme law of the land.[1]

Similarly, wherever the Constitution, expressly or by implication, refers to custom or opinion, the framers may have meant that prevailing either when the instrument was adopted or when it was interpreted and applied. If the latter construction be adopted, a change in custom or opinion might make a difference in the constitutionality of a statute. Otherwise, it could have no such effect. Thus, the Eighth Amendment forbids "cruel and unusual punishments." Does this mean unusual when the amendment was adopted, or unusual when the punishment is inflicted? The word was capable of either meaning. If the latter be correct, the lapse into disuse of a punishment formerly prevalent may be material in deciding whether at the present day it falls within the inhibition of the amendment, and a punishment once legal may perhaps be held now unconstitutional. If, however, the other construction be chosen, the frequency or infrequency with which the particular penalty is now imposed becomes wholly irrelevant.

The phrase, "due process of law," furnishes another instance of the same ambiguity. Whether a law is arbitrary and so not "due process" is largely a matter of opinion. In the Middle Ages, or

[1] It is a curious fact that, under the Confederation, the more important measures required in the Congress the assent of nine states and not in terms of two thirds. Article IX. of the Articles of Confederation. It was pointed out by Alexander Hamilton in the Federalist (No. XXII.) that, by the admission of a number of new states, this provision would lose a large part of its effectiveness. Nine states would no longer be the equivalent of two thirds of the whole number.

even in the eighteenth century, public sentiment tolerated many laws which would be utterly abhorrent to the spirit of the present period. The objective facts may be precisely the same. The evils of the legislation in question may have existed in an equal degree then as now. The only difference may be that in days gone by public opinion winked at many hardships which would not now be overlooked. The question, then, arises by what standard the reasonableness of a law is to be determined. Is the norm to be the opinion of the average reasonable man of the eighteenth century, or of the time in which the statute is enacted? In other words, does the Constitution forbid legislation which the reasonable man of that age would judge arbitrary as applied to whatever objective facts may exist when the law is adopted and enforced, or does it prohibit governmental action which is arbitrary according to the estimate of the intelligent reasonable man of the date of the passage of the law? According to the authorities, it seems that the former is the correct view. In the leading case on the subject,[1] the rule was distinctly laid down that any act is valid which accords with "those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." This doctrine does not prevent an act which was reasonable and proper during the period intervening between Magna Charta and the American Revolution from becoming arbitrary and void by reason of the disappearance of the facts on which its reasonableness depended. It does seem to include the proposition that no proceeding or enactment can be held no longer "due process" simply because the general sentiment of the intelligent public has become less tolerant of wrong and more sensitive to injustice.[2]

For example, special assessments for local improvements are now upheld in spite of many acknowledged evils and of the great

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[1] Den *d.* Murray *v.* Hoboken Land Co., 18 How. 272, 277.

[2] Of course, the mischiefs attendant upon a certain law or practice may have existed from the earliest times, but may have only recently been discovered and brought to the attention of the people. In such cases the objective facts have undergone no change; yet the court might declare that the formerly prevalent belief in the reasonableness of the law of practice was erroneous, and that the process had all along been unconstitutional. Yet it should be a remarkable occasion to warrant such a course. However, in this connection, compare Stone *v.* Mississippi, 101 U. S. 814, with Dartmouth College *v.* Woodward, 4 Wheat. 518.

possibility of abuse to which that form of taxation is peculiarly liable.[1] It is the general opinion of the public that on the whole the advantages outweigh the disadvantages; and, therefore, the courts are now unable to say that the levy of special assessments is a taking of property without due process of law. But suppose, while the amount of injustice which such assessments cause remains constant, the sentiment of the people undergoes a revolution, so that such taxation should come to be thought by all intelligent, reasonable men absolutely barbarous. Could the courts then pronounce special assessments a violation of the Fourteenth Amendment? It would clearly seem not, as the authorities now stand.[2] The test to be applied is whether the framers of the Constitution — that is, the intelligent, reasonable men of their day — would regard the statute in question, as applied to the facts in existence at the time of its passage, as wholly arbitrary and outrageous.[3]

It would seem that this rule must work both ways, so that any proceeding which was formerly thought arbitrary cannot be now sustained merely because, by a change in popular sentiment, it is at the present time thought permissible. It by no means follows that no proceeding can be regarded as due process unless it can show the sanction of usage prior to the adoption of the Constitution; and this is so even when no change has occurred in the facts on which the reasonableness of the law is to be judged. Many things were formerly thought permissible which were never actually adopted. It is therefore within the power of the states to substitute a prosecution on the sworn information of the attorney-general for the common law method of procedure by indictment of a grand jury.[4] This is so because the proceeding by information, while not in vogue in America at the time of the Revolution, is yet reasonable and just as well to the government as to the accused, and would have been so deemed by the framers of the Constitution and of the Fourteenth Amendment. If the indictment of a grand jury had been thought by those statesmen absolutely indispensable

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[1] People *v.* Mayor, etc. of Brooklyn, 4 N. Y. 419; Spencer *v.* Merchant, 125 U. S. 345.

[2] But see Norwood *v.* Baker, 172 U. S. 270. It is undeniable that in this case the court held a tax unconstitutional which even a few years ago would universally have been sustained. See Davidson *v.* New Orleans, 96 U. S. 97; Spencer *v.* Merchant, 125 U. S. 345; Lent *v.* Tillson, 140 U. S. 316.

[3] But see Holden *v.* Hardy, 169 U. S. 366, 385–389.

[4] Hurtado *v.* California, 110 U. S. 516.

to any fair and proper trial for the more serious offences, then the change in the sentiment of the people in that regard would seem immaterial, and a conviction for felony on information merely would be illegal.

Because this is the interpretation given to the phrase, "due process of law," it does not follow that the analogous construction should be adopted for other clauses in the Constitution. For instance, we know that in the section regulating amendments, "three fourths of the several States" means three fourths, not of the original thirteen States, but of whatever may, for the time being, happen to be the total number of the United States. Moreover, it is not clear that "unusual punishments" in the Eighth Amendment does not mean punishments which shall be unusual when imposed. All the familiar arguments in favor of an "elastic constitution" may be urged in support of that construction. The fact that the Constitution was intended to endure perpetually, the importance of leaving the legislature, so far as possible, free to adopt such measures as the sentiment of the people may permit or require — these are legitimate reasons for interpreting "unusual" to mean unusual when the penalty is exacted.[1] Whether they are convincing is a different question, which in no way concerns the present subject. Suffice it here to say that either interpretation is permissible, and that either may be adopted without conflicting with the sound theory of constitutional construction; and that the same thing is true in other similar cases.

Nevertheless, it must never be forgotten that by adopting the elastic, flexible construction of such terms as "unusual," the court does not decide that those words must be interpreted in whatever sense they may bear when construed. That we have already seen to be inadmissible.[2] They do not say that if "unusual" should, by some linguistic somersault, come to mean customary, then the amendment should be taken to forbid "cruel and customary punishments." On the contrary, the interpretation of the word should coincide with the meaning which it bore when incorporated into the instrument; but it may be that such meaning was equivalent to "whatever may be at the time the punishment shall be inflicted uncommon or infrequent." Whether that was really the meaning is an ordinary question of interpretation.

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[1] This seems to be the construction approved by Judge Cooley. Cooley, Const. Lim. *330.

[2] *Supra*, p. 204.

In conclusion, it may be well to summarize what seem to the writer to be the sound doctrines governing the application of the Constitution to the novel circumstances and unprecedented problems in which the people of the United States are now so deeply involved. The fundamental principles may be briefly recapitulated in three propositions: —

I. The intention of the framers as evidenced by the reasonable construction of their words, excluding cases settled by prior decisions, and, if the question be political, by the result of war, must always prevail.

II. The construction of the Constitution, being dependent on the unchanging intention of the framers, should never vary.

III. While the construction of the Constitution is invariable, a measure which is unconstitutional at one time may be valid at another time, and *vice versa*, by reason of a change in the facts to which it is to be applied.

The elasticity, then, of the Constitution consists, not in a "capacity for change independent of formal amendments," but in a liberal and statesmanlike construction which will leave the government free play for all just and legitimate measures even in times of the greatest national peril. The Constitution and its construction is not elastic or flexible; it is firm, unyielding, and permanent. The unaltering intention of the framers must, indeed, therefore be respected; but if to the search for such intent we bring a clear vision, sound legal learning, and real statesmanship, it will be found that the wise patriots who formed the American Union have rarely restrained the government which they created from any measure which ought ever to be employed. This is true even after the lapse of more than a century, and after the enormous and unexpected developments of those eventful years. The true construction of the Constitution will be found to prevent only what is wrong and enjoin only what is right.

These being the principles by which our fundamental law must be administered, at the present time when a departure from traditional policies is being inaugurated, the importance of holding fast to the Constitution in its just and reasonable construction can hardly be over-emphasized. Strive as we may, it is impossible to place ourselves in the position of those who framed the instrument, and interpret it as they would have done. We cannot eradicate from our minds the knowledge of the momentous historical events which elapsed during the past century. We may recognize that these facts should not influence our interpretation of the Con-

stitution, yet unconsciously the judgment will be warped thereby. When, therefore, the danger of inadvertent errors is so great, at all events we should profess sound doctrine, and, avoiding all conscious deviations, exert ourselves, so far as possible, to adhere to the course which, in the abstract, our judgment approves.

Especially is this true at a time when the politicians of both parties are uttering much nonsense under the guise of constitutional argument. On the one hand, caution is necessary lest the desperate straits of a political organization should fasten upon us a more narrow and restrictive construction of the Constitution than the law demands. On the other hand, the people should see to it that so-called statesmen, in their eagerness to obtain a personal or partisan advantage, or even from a sincere desire to advance the public interests, shall not depart from that construction of the instrument which the fathers would have approved. The Constitution is the link which binds us to a glorious past. The Declaration of Independence may be abandoned, if it be deemed out of date, without, perhaps, doing violence to our laws and institutions. But the Constitution is the supreme law of the land; and to that at least we must adhere. Its infraction is partial anarchy; and its abolition — if the imagination can conceive of such a thing — is the destruction of the government of the United States.

Arthur W. Machen, Jr.

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